A-489-501
Administrative Review
POR: 05/01/2018-04/30/2019
Public Document
AD/CVD/OIV: MZ

March 15, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 2018-19 Antidumping Duty Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey

---

I. SUMMARY

We analyzed the comments of the interested parties in the 2018-2019 administrative review of the antidumping duty order covering circular welded carbon steel standard pipe and tube products (CWP) from Turkey. As a result of our analysis, we made no changes to the margin calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan).[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

Comment 1: High Inflation Methodology
Comment 2: Section 232 Duties

[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, 76674 (December 10, 2015) (*Welded Pipe and Tube from Turkey 2013-2014*). We determined that there is no evidence on the record for 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.

II. BACKGROUND

On July 23, 2020, the Department of Commerce (Commerce) published the preliminary results of the 2018-2019 administrative review of the antidumping duty order on CWP from Turkey.[2] This review covers 21 producers/exporters.[3] Commerce selected Borusan for individual examination. The period of review (POR) is May 1, 2018, through April 30, 2019.

We invited parties to comment on the *Preliminary Results*. On September 15, 2020, we received a case brief from Borusan.[4] On September 30, 2020, we received a rebuttal brief from Wheatland Tube, a domestic producer and interested party (the petitioner).[5] After analyzing the comments received, we continued to use the weighted-average margin in the *Preliminary Results*.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[6] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[7] On January 13, 2021, Commerce extended the final results of this review by 60 days.[8] The deadline for the final results of this review is now March 18, 2021.

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

---

[2] *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; 2018–2019*, 85 FR 44509 (July 23, 2020) (*Preliminary Results*).

[3] This review covers the following companies: Borusan (*i.e.*, Borusan Mannesmann and Borusan Istikbal); Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Endustrisi), Tosyali Dis Ticaret A.S. (Tosyali Ticaret), and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik); Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Holding (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. A.S. (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), Kale Baglann Teknolojileri San. Ve Tic. A.S. (Kale Baglann), Borusan Istikbal Ticaret (Istikbal Ticaret) and Cinar Boru Profil San. ve Tic. As (Cinar Boru).

[4] *See* Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Case Brief," dated September 15, 2020 (Borusan's Case Brief).

[5] *See* Petitioner's Letter, "Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Rebuttal Brief," dated September 30, 2020 (Petitioner's Rebuttal Brief).

[6] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

[7] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

[8] *See* Memorandum, "2018-2019 Antidumping Duty Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 13, 2021.

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.

IV. DISCUSSION OF THE ISSUES

Comment 1: High Inflation Methodology

Borusan's Argument:

- In the *Preliminary Results*, Commerce did not follow the statute, past precedent, and major inflation accounting standards when it concluded that there was inflation above 25 percent in Turkey during the POR that warranted monthly sales comparisons and an adjustment to Borusan's costs (whether denominated in U.S. dollars (USD) or Turkish Lira (TL)).[9]
- Commerce did not explain how its determination to apply its high inflation methodology in this review comports with section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), pursuant to which cost should 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 (GAAP) of the exporting or producing country.[10]
- Borusan submitted all of its costs of production for the subject merchandise that were kept in accordance with Turkish GAAP, and Turkish GAAP did not classify Turkey as a high inflation economy during the POR.[11]
- Borusan did not make any adjustments to its TL books and records for inflation during the POR or any other period over the past three years in accordance with the Turkish GAAP.[12] Furthermore, the auditors reviewing Borusan's TL financial statements did not make any inflation-related adjustments to Borusan's financial results for the two most recently completed fiscal years.[13]
- Thus, under the statute, Commerce had no legal basis to depart from using Borusan's unadjusted costs, because Borusan's costs are kept in accordance with Turkish GAAP, and reasonably reflect the costs associated with the production and sale of subject merchandise.[14]
- In prior cases, where Commerce has faced allegations of a highly inflationary economy, it has turned to the International Financial Reporting Standards (IFRS), often referred to

[9] *See* Borusan's Case Brief at 17-18 (citing Borusan's Letters, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Sections B-D of Initial Questionnaire," dated November 8, 2019 (Borusan's Initial Sections B-D QR) at D-12 to D-13 and Exhibits D-1A and D-1B; and "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to High Inflation Cost of Production and Constructed Value Questionnaire," dated March 9, 2020 (Borusan's High Inflation QR) at Exhibit D-22).
[10] *Id.*
[11] *Id.*
[12] *See* Borusan's Case Brief at 19.
[13] *Id.*
[14] *Id.*

as International Accounting Standards (IAS), to determine whether in fact that country was experiencing high inflation.[15]

- In the final results of *Stainless Steel Plate in Coils from Belgium*, Commerce explained that the source of its rule to determine when a change in cost is considered significant throughout the period of investigation (POI) or POR in a hyperinflationary environment was the generally accepted accounting standards promulgated in IFRS.[16]
- As demonstrated in *Steel Plate in Coils from Belgium,* Commerce's focus in prior cases has been on whether there was a pattern of three years at 25 percent inflation. Three years of sustained inflation is, therefore, the trigger for hyperinflationary accounting, determined by Commerce and IFRS, not one year at 25 percent, as determined by Commerce in this case.[17]
- In this instant case, even an end-point to end-point analysis over the review period yielded only a 25.36 percent inflation rate. In fact, throughout the POR, the inflation rates for several months were below 25 percent, with only one month (October 2018) above 25 percent. This demonstrates that there was no sustained significant inflation during the POR.[18]
- Given that IFRS is the basis for Commerce's inflation standard, and because Turkish GAAP did not classify Turkey as a highly inflationary economy during the POR, there is no valid basis to resort to inflation accounting in this case, particularly in light of Borusan's financial statements on the record of this review, which contradict a finding that inflation accounting is necessary.[19]
- Excerpts from the U.S. Securities and Exchange Commission's International Practices Task Force, which analyzes hyperinflationary economies and is generally relied upon by U.S. GAAP for hyperinflationary economy determinations, provide evidence that Turkey is not included as a country currently experiencing high inflation, with projected high inflation, or with cumulative inflation between 70 percent and 100 percent.[20]
- Commerce has also previously declined to use a high-inflation methodology where, as in this case, the respondent's functional currency was USD.[21]
- In the final determination of *Ferrosilicon from Venezuela*, Commerce did not require the respondent to submit a high inflation questionnaire response or apply any inflation adjustment to the respondent's costs, because the respondent's functional currency was in USD.[22]

---

[15] *Id* at 19-20.

[16] *See* Borusan's Case Brief at 19-21 (citing *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*Stainless Steel Plate in Coils from Belgium*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4, where Commerce stated that "{t}he inflation standard set out under IAS 29 is when the cumulative inflation rate over three years approaches, or exceeds, 100 percent... doubling of the index over a three year period equates to approximately a 25 percent annual rate of inflation. The Department has similarly followed the guidelines of IAS 29 to determine whether economic variables (*i.e.*, inflation) affect the financial information and cost data.").

[17] *See* Borusan's Case Brief at 20-21.

[18] *Id.*

[19] *Id.*

[20] *See* Borusan's Case Brief at 22 and 23; and Borusan's High Inflation QR at Exhibit 26.

[21] *See* Borusan's Case Brief at 24-25 (citing *Ferrosilicon from Venezuela: Final Determination of Sales at Less Than Fair Value*, 79 FR 44,397 (July 31, 2014) (*Ferrosilicon from Venezuela*), and accompanying IDM at Comment 3).

[22] *Id*.

- In the present case, Borusan's functional currency is the USD, because a significant amount of Borusan's cost is incurred and recorded in USD and the USD-based transactions dominate in its business. Moreover, a significant portion of Borusan's loans are denominated in USD.[23]
- While Commerce inquired about Borusan's functional currency,[24] it did not address, in its *Preliminary Results,* Borusan's response relating to its functional currency. Accordingly, Commerce should fully review the record for the Final Results and conclude that, as in *Ferrosilicon from Venezuela*, no inflation adjustment is warranted as record evidence demonstrates that Borusan's functional currency is USD.
- Commerce's Enforcement & Compliance Antidumping Manual (E&C's Antidumping Manual) makes clear that it will not apply an inflation adjustment where inputs are purchased in USD.[25]
- In the *Preliminary Results*, Commerce disregarded E&C's Antidumping Manual and applied an inflation adjustment to all of Borusan's costs regardless of whether they were incurred in USD or TL, although the record of this case establishes that the majority of Borusan's raw materials are purchased in USD (both imports and domestically).[26]
- For the reasons noted above, Commerce should not apply the high inflation methodology. Instead Commerce should apply quarterly costs. Since the majority of Borusan's overall costs are incurred in USD, Commerce has no factual basis for applying its inflation methodology. Rather, Commerce should use the quarterly costs that Borusan submitted in its Initial Sections B-D QR.[27]
- If Commerce continues to use its inflation adjustment methodology, it should adjust its calculations in the Final Results such that it only applies an inflation adjustment to costs that are incurred in TL (*i.e.*, couplings).
- Moreover, E&C's Antidumping Manual addresses scenarios, such as the present case, where the inflation rate only spiked in one month and many other months showed very low rates of inflation, particularly when compared to prior months in the POR.[28]

---

[23] *Id.* (citing Borusan's High Inflation QR at 11 and Exhibit D-37; Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Second Supplemental Questionnaire for High Inflation," dated July 2, 2020 (Borusan's 2nd Supplemental High Inflation QR) at 1 to 3; and Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Section A of Initial Questionnaire," dated September 25, 2019 (Borusan's AQR) at Exhibit A-13).

[24] *See* Borusan's Case Brief at 24-25 (citing Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Second Supplemental Questionnaire for High Inflation," dated June 26, 2020).

[25] *See* Borusan's Case Brief at 26 (citing E&C's Antidumping Manual, Chapter 9, U.S. Department of Commerce (2015) (Cost of Production and Constructed Value), p.37; in which it is stated that "{w}here inputs are purchased in U.S. dollars, or for an unspecified amount in foreign currency corresponding to a stated amount of U.S. dollars, we may use the dollar acquisition cost because the dollar is not subject to major inflation." Borusan also cites to *Notice of Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela*, 67 FR 15,533 (April 2, 2002) (*Silicomanganese from Venezuela*), and accompanying IDM at Comment 1.

[26] *See* Borusan's Case Brief at 26; and Borusan's High Inflation QR at 3.

[27] *See* Borusan's Case Brief at 27.

[28] *Id.* (citing E&C's Antidumping Manual at Chapter 8, page 75, where it is stated that "{i}n high inflation cases, identification of the date of sale is particularly critical, because it affects whether, and to what extent, inflation-related adjustments must be made when comparing the U.S. price to other prices and/or to the CV. While sales comparison periods based on the month of the U.S. sale have been the norm in past cases, the determination of the proper comparison period should be reviewed for each case. Sales comparison periods may be influenced by the

- Finally, if Commerce continues to find that Turkey experienced high inflation during the POR and makes an inflation adjustment, it should use quarterly costs, not monthly costs.[29]

Petitioner's Argument:

- Commerce should disregard Borusan's arguments and continue to apply its high inflation methodology in the final results.[30]
- Borusan argues that, because it was not required to make adjustments for inflation in its books pursuant to Turkish GAAP, Commerce's application of high inflation in this administrative review does not comport with section 773(f)(1)(A) of the Act. However, the GAAP requirement is just one part of a two-part contingency under section 773(f)(1)(A) of the Act.[31]
- The second part, which Borusan ignores, requires that the costs also "reasonably reflect the costs associated with the production and sale of the merchandise." The statute does not define which costs are "reasonable," giving Commerce the discretion to determine the issue.[32]
- Further, Congress used "normally" before this two-part contingency clause, giving Commerce broader discretion to depart from a company's books under either of two specified conditions, but also for unspecified reasons.[33]
- Congress intended Commerce to have broad discretion when determining whether merchandise has been sold at less than cost, asserting that Commerce will employ accounting principles generally accepted in the home market of the country of exportation if Commerce is satisfied that such principles reasonably reflect the variable and fixed costs of producing the merchandise.[34]
- Commerce regularly exercises this discretion and the courts have also reviewed Commerce's discretion under section 773(f)(1)(A) of the Act not only as a general principle, but specifically with respect to the issue of inflationary effects and local GAAP.[35]
- Because Commerce has the discretion to depart from a company's books and records under section 773(f)(1)(A) of the Act, Borusan's argument that Commerce's application of its high inflation methodology did not comport with section 773(f)(1)(A) of the Act has no merit.

---

pattern of inflation observed during the POI/POR. Comparisons across periods of greater than one month may be non-distortive if the inflationary trend is low for certain months within the POI/POR."

[29] *Id.* at 27-28.

[30] *See* Petitioner's Rebuttal Brief at 15.

[31] *Id.* at 16-17.

[32] *Id*.

[33] *Id*.

[34] *See* H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973)

[35] *See* Petitioner's Rebuttal Brief at 17 (citing *Camargo Correa Metais, S.A. v. United States*, 17 C.I.T. 897, 898 (CIT 1993), finding: "This Court may not substitute its own construction of §1677(b)(b) for a reasonable interpretation made by the ITA... The Court finds the ITA's interpretation of when to use the GAAP of the home market country to determine COP is reasonable.").

- Further, Borusan appears to have incorrectly conflated Commerce's hyperinflationary methodology (replacement costs) with its high inflation methodology (indexed costs). The E&C's Antidumping Manual states:

> If the annualized rate of inflation exceeds the 25 percent threshold, the Department will determine that the associated country experienced high inflation during the POI or POR. In deciding whether to apply the high inflation methodology, we base our calculations on the annualized rate of inflation over the relevant reporting period.[36]

- Further, when using its high inflation methodology, it is also Commerce's practice to index the costs reported in each month of the reviewed period, even if inflation was absent during certain portions of the period for which the costs were reported.[37]
- In this case, Borusan has acknowledged that there was inflation over 25 percent for at least one month of the POR and Commerce conducted an independent analysis of the Producer Price Index (PPI) and correctly determined that the annualized rate of inflation exceeded 25 percent during the POR.[38]
- Moreover, Commerce's finding that high inflation existed in Turkey during the POR is consistent with its findings in other contemporaneous proceedings involving Turkey with nearly identical POI[39] and an identical POR.[40]
- Accordingly, Commerce correctly found that high inflation existed during the POR; and its finding is consistent with its practice.[41] Borusan cites to *Ferrosilicon from Venezuela* in support of its argument that Commerce should not apply high inflation in this case because its functional currency is in USD. However, record evidence demonstrates that the facts in this case are distinguishable from those in *Ferrosilicon from Venezuela.*[42]
- First, the respondent in *Ferrosilicon from Venezuela* invoiced its home market sales in USD; whereas, in this case, Borusan, invoiced the majority of sales to its home market customers in TL.

---

[36] *See* E&C's Antidumping Manual at Chapter 8, page 74.
[37] *See* Petitioner's Rebuttal Brief at 17-18 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73170 (December 29, 1999), in which Commerce stated that "{a}s a matter of practice, when the Department uses its highinflation methodology, we index the costs reported in each POI month, even if inflation was absent during certain portions of the period for which the costs were reported (*i.e.*, the POI), and make sales comparisons on a monthly average basis, rather than on a POI average basis, in order to minimize the effects of inflation on our analysis.").
[38] *See* Commerce's Letter, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: High Inflation Cost of Production and Constructed Value," dated February 11, 2020 (High Inflation Questionnaire).
[39] *See* Petitioner's Rebuttal Brief at 18 (citing *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 68,111 (December 13, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 2-3, unchanged in *Certain Quartz Surface Products From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020) (*Certain Quartz Surface Products from Turkey*).
[40] *Id.* (citing *Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission, and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 44861 (July 24, 2020) (*Light-Walled Rectangular Pipe and Tube from Turkey*), and accompanying PDM at 7).
[41] *Id*.
[42] *Id.* at 19.

- Second, the issue in *Ferrosilicon from Venezuela* pertained to whether Commerce should use a short-term interest rate denominated in USD, as opposed to the local currency. Accordingly, the determination in that case was divorced from the issue of adjusting costs for high inflation.
- Third, when citing to *Ferrosilicon from Venezuela,* Borusan omitted that Commerce took note of an apparent change in the respondent's arguments, one that was raised too late for it to reconsider the issue of high inflation.[43]
- For the reasons noted above, Borusan's citation to *Ferrosilicon from Venezuela* is inapposite and Borusan has misconstrued the record in proclaiming that its functional currency is USD, as it is not.[44]
- Moreover, while Borusan has submitted a set of USD-financial statements at Exhibit A-13 of its Section A Questionnaire Response[45] that state the functional currency is the USD, these statements are irrelevant to the reported costs and to any evaluation of high inflation.
- The USD-financial statements are consolidated and include the results of other subsidiaries that are not involved in the production of subject merchandise. These statements only exist because Borusan, as a listed company, is required to generate them for its shareholders.[46]
- Notwithstanding their limited purpose within Turkey, these USD-financial statements are only used for calculating net financial expenses, which, pursuant to Commerce practice, are required to be at the highest level of consolidation. Moreover, even for this limited purpose, the USD costs themselves are not directly reported in Borusan's costs *per se*, only their relative value, expressed as a ratio.[47]
- Thus, Borusan's reported costs do not include any values taken directly from these USD financial statements. Instead, all of Borusan's reported costs are derived from its TL-denominated statements, maintained in its normal books and records, which, pursuant to Commerce practice, are at the unconsolidated level.[48]
- Borusan's focus on the "functional currency" language, found in Note 2.2 of its USD consolidated financial statements, is misplaced, as Borusan conveniently ignored the prior section in the same financial statement (*i.e.*, "Note, 2.1.1. Accounting Policies"), which makes clear that: (1) TL is the currency of its accounting records; and (2) the USD values reported in its consolidated statements are derived from its TL-denominated records, not the other way around.[49]

---

[43] *Id.* (citing *Ferrosilicon from Venezuela*, in which Commerce stated that: "FerroVen's prior statements that the "inflation in Venezuelan {Bs} did not affect FerroVen's prices or costs" stands in contrast to its admission that the interest rate incurred on local borrowings by FerroVen includes a built-in portion tied to inflation rates. This argument also comes at a time that is far too late for the Department to reconsider its decision not to examine further the effects of inflation in the Venezuelan economy on FerroVen's operations or whether the sharp decline in value of the Venezuelan bolivar did, in fact, have a significant effect on FerroVen's expenses and income).
[44] *Id.* at 20.
[45] *See* Borusan's AQR at Exhibit 13.
[46] *See* Petitioner's Rebuttal Brief at 20 (citing Borusan's 2nd Supplemental High Inflation QR, in which Borusan stated that "{t}oday, the law requires that all listed companies adopt and report under IFRS.").
[47] *Id* at 20-21.
[48] *Id*.
[49] *Id*. at 22 (citing Note "2.1.1. Accounting Policies" in Borusan's Consolidated USD financial statements, which is provided in Exhibit A-13 of Borusan's AQR).

- Borusan has also misquoted E&C's Antidumping Manual by indicating that Commerce shall not apply an inflation adjustment where inputs are purchased in USD, in that E&C's Antidumping Manual indicated that Commerce may not apply an inflation adjustment where inputs are purchased in USD. Borusan fails to explain how the discretionary language "may" morphs into the mandatory language "shall."[50]
- In support of its argument, Borusan also cites to *Silicomanganese from Venezuela*, although the respondent in that case, Hevensa, invoiced all of its home market customers in USD, reported its costs in USD, and its books and records were adjusted for inflation pursuant to local GAAP.[51]
- Here, Borusan invoices only a small fraction of its home market sales in USD, its costs are recorded and reported in its books TL, and its books and records are not adjusted for inflation. Moreover, the central matter before Commerce in *Silicomanganese from Venezuela* was whether to apply the inflation adjustment found in its financial statements to Hevensa's reported costs.[52]
- Accordingly, Borusan's cite to *Silicomanganese from Venezuela* is inappropriate, because that case is inapposite and represents a different set of facts and a different base issue.[53]
- Moreover, Borusan maintains that record evidence establishes that the majority of its raw materials are purchased in USD (both imports and domestically). However, the record lacks any third party invoices that might show the currency for a single input purchase, l*et al*one multiple examples that might establish a "majority."[54]
- Nevertheless, even if Borusan had submitted such documentation and these did show a USD value on the invoice, it would be irrelevant as the costs are subsequently recorded in Borusan's books and records in TL and Borusan's reported costs are based on that TL value.[55]
- One of Commerce's concerns in a high inflation environment is the impact of exchange rates. Thus, once it is recorded in TL, that aberration gets baked in and carried throughout Borusan's cost system.[56]
- For the reasons noted above, Borusan's arguments are flawed and unsupported by substantial record evidence. Therefore, Commerce should not make any adjustments to its high inflation methodology for the final results.[57]

Commerce's Position: We disagree with Borusan and continue to find that high inflation existed in Turkey during the POR, warranting Commerce's application of its high inflation methodology. We examined whether Turkey experienced high inflation throughout the POR, in order to determine whether Commerce should apply its high-inflation methodology in this case. As a matter of practice, when Commerce uses its high-inflation methodology, we index the costs reported in each POR month, even if inflation was absent during certain portions of the period for which the costs were reported (*i.e.,* the POR), and make sales comparisons on a monthly

[50] *Id.* at 22.
[51] *Id*.
[52] *Id*.
[53] *Id.* at 23.
[54] *Id*.
[55] *Id*.
[56] *Id.* at 24.
[57] *Id.*

average basis, rather than on a POR average basis, in order to minimize the effects of inflation on our analysis.[58] This practice is designed to ensure that the normal value (NV) is not distorted by episodes of high inflation.[59] Our practice with respect to countries experiencing high inflation is illustrated in *Silicomanganese from Brazil*,[60] where Commerce stated:

> In countries experiencing high inflation, the nominal value of production costs increases over time, even where such costs, expressed in real terms, remain constant. We recognize that this would cause distortions in the antidumping analysis because of our practice of comparing period-average COP and CV amounts to transaction-specific prices during the POR. As an illustration of this distortion, consider a sales-below-cost analysis where real production costs remain constant but, because of high inflation, nominal costs rise throughout the POR. Under this scenario, a period-average COP figure based on monthly nominal cost amounts would tend to be higher than the individual home-market sale prices at the beginning of the period but lower than the prices at the end of the period. Depending on the timing of the home-market sales, this could result in an excessive quantity of below-cost sales at the beginning of the period or, conversely, an overstatement of the number of above-cost sales at the end of the period. These same distortions exist when we compare U.S. prices to CV based on period-average costs in high-inflation economies. To help mitigate the distortions in our antidumping analysis caused by high inflation and rapidly escalating nominal costs, we compute the period-average COP and CV on a constant currency basis using monthly inflation indices during the period and then restate the average in terms of the currency value in each month. Thus, the Department's methodology does not increase actual costs, but rather allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels.[61]

Moreover, Commerce's practice is to use a 25 percent per annum inflation rate as a general guide for assessing the impact of inflation on an economy and for determining whether an economy experienced high inflation during the POI or POR.[62] This practice is also illustrated in E&C's Antidumping Manual at Chapter 8, noting:

> If the annualized rate of inflation exceeds the 25 percent threshold, Commerce will determine that the associated country experienced high inflation during the

---

[58] *See Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190 (June 29, 1998); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73170 (December 29, 1999); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey*, 67 FR 31264, 31265 (May 9, 2002).

[59] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999) (*CTL Plate from Indonesia*).

[60] *See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004) (*Silicomanganese from Brazil*), and accompanying IDM at Comment 4.

[61] *Id.*; *see also CTL Plate from Indonesia*, 64 FR at 73170.

[62] *See Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea*, 64 FR 137, 139 (January 4, 1999)*; see also Certain Quartz Surface Products from Turkey* and *Light-Walled Rectangular Pipe and Tube from Turkey.*

> POI or POR. In deciding whether to apply the high inflation methodology, we base our calculations on the annualized rate of inflation over the relevant reporting period.[63]

Borusan's argument that Commerce's inflation methodology is based on the IFRS, as explained in *Stainless Steel Plate in Coils from Belgium,* and that a pattern of high inflation over a three year period is the trigger for high inflation accounting according to IFRS is misplaced. While that case was establishing a practice for when Commerce will deviate from our normal annual average cost methodology and use alternative cost averaging methods due to rapidly changing input costs, we did explain that the most comparable scenario to rapidly changing input costs may be that of a highly inflationary environment.[64] Accordingly, Commerce did explain that the high inflation threshold of a 25 percent annual rate of inflation originated from IFRS. Essentially, International Accounting Standard (IAS) 29 established when it's appropriate for an entity to depart from normal IFRS standards and adopt an alternative methodology to mitigate distortions from the use of historical costs. The inflation standard set out under IAS 29 is when the cumulative inflation rate over three years approaches, or exceeds, 100 percent. We noted that doubling of the index over a three-year period equates to approximately a 25 percent annual inflation rate. Consequently, Commerce similarly followed these guidelines and determined that in instances when the inflation index of the respondent's country exceeds 25 percent, Commerce utilizes the monthly inflation indices to restate the annual weighted average cost for the respondents at the currency level for each month of the POI or POR.

To be clear, however, in *Stainless Steel Plate in Coils from Belgium*, Commerce only referred to the IFRS, as a guideline; to explain how it derived the 25 percent annual inflation rate threshold in its determination of whether economic variables (*i.e.*, inflation) affect the financial information and cost data reported by a respondent operating in that economic environment.[65] As noted above, Commerce determines whether high inflation exists in a country when the annualized rate of inflation exceeds 25 percent over the relevant period. In the present case, our practice of applying an annualized benchmark, to determine the existence of high inflation, shows that Turkey experienced high inflation during the POR.[66] In such instances, Commerce's high-inflation methodology is used even if the rate of inflation is less than 25 precent for one or more individual months of the POR. Furthermore, as the petitioner noted, Commerce's finding that high inflation existed in Turkey during the POR of this review is also consistent with its findings in other contemporaneous proceedings involving Turkey with identical or nearly identical periods to the instant POR.[67] Accordingly, Commerce's determination that high inflation existed in Turkey during the reporting period is substantiated by record evidence and

---

[63] *See* E&C's Antidumping Manual at Chapter 8, page 74.
[64] *See Stainless Steel Plate in Coils from Belgium* IDM at Comment 4.
[65] *Id.* at Comment 4, in which Commerce stated that "{i}n high inflation cases, the Department has established a threshold of 25 percent annual rate of inflation, which is used to determine when the Department departs from its normal methodology of calculating an annual weighted-average cost. The Department's threshold of 25 percent originates from generally accepted accounting standards promulgated in International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 was developed to provide guidelines for enterprises reporting in the currency of a hyperinflationary economy so that the financial information provided is meaningful."
[66] *See* High Inflation Questionnaire, in which we noted that the PPI is sourced from the "Domestic producer price index and rate of change, January 2020," as published by the Turkish Statistical Institute.
[67] *See Certain Quartz Surface Products from Turkey* and *Light-Walled Rectangular Pipe and Tube from Turkey*.

consistent with Commerce's practice and recent precedents. Therefore, in order to mitigate the distortions in our antidumping analysis caused by high inflation and escalating nominal costs, we determined that it is appropriate to compute the period-average cost of production (COP) and constructed value (CV) on a constant currency basis using monthly inflation indices during the reporting period and then restate the period weighted average in terms of the currency value in each month.

Moreover, we disagree with Borusan's argument that Commerce's application of its high inflation methodology did not comport with section 773(f)(1)(A) of the Act, because Borusan was not required by the Turkish GAAP to make adjustments for inflation in its books and records. Under section 773(f)(1)(A),[68] Commerce does not automatically accept a company's reported costs, unless a company's records reasonably reflect the costs associated with the production and sales of merchandise. Here, while Borusan submitted its costs based on its TL books and records, Commerce established that high inflation existed in Turkey during the POR and, as noted above, used its high inflation methodology to mitigate the distortion caused by high inflation. Notably, Commerce's methodology does not increase Borusan's actual costs, but rather allows Commerce to calculate the weighted-average period cost from monthly data that is stated in different currency levels. Given its discretion under section 773(f)(1)(A) of the Act, Commerce's application of its high inflation methodology to mitigate the distortion caused by high inflation in this case is consistent with section 773(f)(1)(A) of the Act.

Borusan further argues that Commerce should not apply its high inflation methodology in this case, because its functional currency is the USD. In support of its argument, Borusan cites to the final determination of *Ferrosilicon from Venezuela*, noting that Commerce did not require the respondent in that case to respond to a high inflation questionnaire or apply any inflation adjustment, because the respondent's functional currency was the USD. First, while Borusan's USD-consolidated financial statements indicates that Borusan Group's functional currency is the USD,[69] notes to the same financial statements confirm that Borusan maintains its books and records in TL; not USD.[70] According to its USD-consolidated financial statements, Borusan maintains its accounting records and prepares its statutory accounting reports in TL, in

[68] Section 773(f)(1)(A) of the Act states: "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. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs."

[69] *See* Note: "2.2. Functional and Presentation Currency," of Borusan's USD-consolidated financial statements at 8, provided in Exhibit A-13 of Borusan's AQR.

[70] *Id.*; *also see , e.g.*, Note: "2.1.1. Accounting Policies (Continued)," at 8, provided in Exhibit A-13 of Borusan's AQR, noting that "{t}he Company maintains its accounting records and prepares its statutory accounting reports in Turkish Lira ("TRY") in accordance with the Turkish Commercial Code (the "TCC"), tax legislation and the Turkish Standard Chart of Accounts issued by the Ministry of Finance (collectively referred to as "Turkish statutory accounts" or "local GAAP"). The foreign subsidiaries maintain their books of account in accordance with the laws and regulations in force in the countries in which they are registered. These financial statements are based on the statutory records, which are maintained under historical cost convention, with the required adjustments and reclassifications reflected for the purpose of fair presentation in accordance with IFRS."

accordance with the Turkish Commercial Code, tax legislation and the Turkish Standard Chart of Accounts issued by the Turkish Ministry of Finance.[71] Second, Borusan's reported costs do not include any values taken directly from its USD-consolidated financial statements.[72] Rather, Borusan's reported costs are derived from its TL-denominated financial statements, which are based on its TL normal books and records at the unconsolidated level.[73] Third, a large portion of Borusan's home market sales are also denominated in TL.[74] Accordingly, Borusan's argument that its functional currency is the USD is not supported by record evidence. Moreover, the analogy drawn with *Ferrosilicon from Venezuela* is also misplaced.[75] In *Ferrosilicon from Venezuela*, the home market sales of FerroVen, the respondent, were denominated in USD.[76] However, in the instant case, as noted above, Borusan's[77] sales in USD represent a small fraction of its overall home market sales.[78] Also, the central issue in *Ferrosilicon from Venezuela* is related to whether Commerce should use a short-term interest rate denominated in USD, as opposed to the short-term interest rate from local currency.[79] Hence the issue in *Ferrosilicon from Venezuela* is divorced from the high inflation argument at issue in this instant review. Finally, when citing to *Ferrosilicon from Venezuela,* Borusan omitted that Commerce took note of a change in the respondent's arguments that was too late for Commerce to reconsider its decision not to examine further the effects of inflation in the Venezuelan economy on FerroVen's operations in that case.[80] Therefore, we find Borusan's citation to the scenario in *Ferrosilicon from Venezuela* to be misplaced.

For the reasons noted above, and consistent with Commerce's practice and precedent, for the final results, we find no reason to depart from our preliminary results of applying Commerce's high inflation methodology.

Comment 2: Section 232 Duties

Borusan's Argument:

- In the *Preliminary Results*, Commerce reduced Borusan's reported U.S. price in its dumping calculation by the amount of any section 232 duties paid by Borusan during the POR.[81] In so doing, Commerce found that the section 232 duties are analogous to U.S. import duties that are properly deducted from export price (EP) and constructed

[71] *Id*.
[72] *Id.*; *see also, e.g.*, Borusan's Initial Sections B-D QR.
[73] *Id*.
[74] *Id*.
[75] *See Ferrosilicon from Venezuela* IDM at Comment 3.
[76] *Id.*
[77] *See Ferrosilicon from Venezuela* IDM at Comment 3.
[78] *See, e.g.*, Borusan's Initial Section B-D QR.
[79] *See Ferrosilicon from Venezuela* IDM at Comment 3.
[80] *Id.* Commerce stated that: "FerroVen's prior statements that the "inflation in Venezuelan {Bs} did not affect FerroVen's prices or costs" stands in contrast to its admission that the interest rate incurred on local borrowings by FerroVen includes a built-in portion tied to inflation rates. This argument also comes at a time that is far too late for the Department to reconsider its decision not to examine further the effects of inflation in the Venezuelan economy on FerroVen's operations or whether the sharp decline in value of the Venezuelan bolivar did, in fact, have a significant effect on FerroVen's expenses and income."
[81] *See* Borusan's Case Brief at 1-2.

export price (CEP) pursuant to the statute, rather than to antidumping duties or section 201 duties, which the U.S. Court of Appeals for the Federal Circuit (CAFC) has determined should not be deducted from the U.S. price.[82]

- Commerce's decision is contradicted by its analysis of section 201 duties conducted in *SSWR from Korea* and upheld by the CAFC in *Wheatland.* 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 conclude that section 232 duties are special duties that should not be deducted from the U.S. price.[83]
- 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 remedial in nature.[84]
- Commerce also concluded that it was not relevant that, unlike regular customs duties, section 232 duties are not passed by Congress, but rather were imposed by the President pursuant to delegated authority and posted in Chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).[85]
- Where an agency adopts a consistent interpretation of a statute, it must follow that course of action unless it can explain the reasons for diverging from it.[86]
- Commerce has consistently interpreted section 772(c)(2)(A) of the Act to provide for the deduction only of regular customs duties and not special remedial duties, and that interpretation has been affirmed by the CAFC.[87]
- In finding that section 232 duties are properly considered regular customs duties, rather than special remedial duties, Commerce's *Preliminary Results* mischaracterize the nature and purpose of the section 232 duties on steel articles. Accordingly, the *Preliminary Results* are in direct conflict with the decision of the CAFC in *Wheatland.*[88]
- Commerce concluded that section 232 duties are not remedial in nature because "{s}ection 232 duties are not focused on remedying injury to a domestic industry," but instead are focused on ensuring that imports do not threaten to impair national security.[89] This conclusion is contrary to the text and operation of section 232 and the statements of Commerce and the President in the section 232 investigation and implementing proclamations.[90]

---

[82] *Id*.
[83] *Id.* at 2-3 (citing *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. Circ. 2007) (*Wheatland*)).
[84] *Id.* at 4 (citing Memorandum, "Placing Memorandum for Section 232 Duties from the 2017-2018 Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey on the Record of this Review," dated August 20, 2020 (Commerce's Section 232 Memo) at 7-9).
[85] *Id*. at 9.
[86] *Id.* at 4 (citing *NMB Singapore Ltd. v. United States*, 557 F.3d 1316, 1328 (Fed. Cir. 2009) ("Once {the Department} establishes a course of action... {the Department} is obliged to follow it until {the Department} provides a sufficient, reasoned analysis explaining why a change is necessary.")).
[87] *Id*. at 5.
[88] *Id.* at 5-6.
[89] *See* Commerce's Section 232 Memo at 8.
[90] *See* Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to U.S. Department of Memorandum on Adjustment for Section 232 Duties," dated August 25, 2020 at Attachment A, pages 3-6 and Attachment 1.

- Like antidumping and countervailing duties and section 201 safeguard duties, section 232 duties are imposed by the Executive Branch following specific investigations on, and determinations of, the existence of particular conditions (*e.g.*, dumping, subsidization, import surges, or impairment of national security).[91]
- The amount of duties imposed is related directly to the extent of the particular conditions determined to exist. In each case, the ability of the Executive Branch to conduct such investigations and impose such remedial measures flows directly from an express delegation of authority through legislation from Congress, which retains generally the ability to modify tariffs under the U.S. Constitution.[92]
- Therefore, this stands in stark contrast to normal U.S. import duties, the extent of which are determined and imposed by Congress pursuant to the United States' World Trade Organization (WTO) obligations.
- While it is correct that the ultimate focus of section 232 is on ensuring that imports do not threaten national security, the statute is clear that the national security determination at issue is not directed solely at national defense or foreign policy considerations as the term "national security" is traditionally understood. On the contrary, the statute directs the Secretary and the President to focus on the economic impact of imports on domestic producers and industries.[93]
- Thus, contrary to Commerce's assertion, as is the case with both antidumping injury investigations and section 201 safeguard investigations, remedying the impact of the imports being investigated on the economic welfare of U.S. domestic industries is a primary focus of the section 232 statute.[94]
- Multiple statements made by the President, the Secretary of Commerce, and Commerce during the section 232 investigation into steel imports 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.[95]
- Aside from these statements by the President and Secretary, which demonstrate that the section 232 duties are remedial, the U.S. Court of International Trade (CIT) and Commerce's Bureau of Industry and Security (BIS) have also referred to the President's actions as remedial.[96]
- Moreover, since the publication of *Proclamation 9705*, the President has already

---

[91] *See* Borusan's Case Brief at 7-8.
[92] *Id*.
[93] *Id*. at 7.
[94] *Id*.
[95] *Id.* at 8-10; *see also Publication of a Report on 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*, 85 FR 40202 (July 6, 2020) and Appendix B.
[96] *See* Borusan's Case Brief at 10-11 (citing *Am. Inst. for Int'l Steel v. United States*, 376 F. Supp. 3d 1335, 1343 (CIT 2019), *cert denied*, 139 S. Ct. 2748, *aff'd*, 806 F. App'x 982 (Fed. Cir. 2020), *cert denied*, 2020 WL 3405872 and to *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum*, 83 FR 46026, 46054-55 (September 11, 2018); *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, 83 FR 12106, 12109 (March 19, 2018).

modified the section 232 duties on steel articles on multiple occasions.[97] This demonstrates that section 232 duties, like section 201 safeguard duties, are temporary in nature.[98]

- In the *Preliminary Results*, Commerce did not address the temporary nature of the duties other than to simply reassert its position that the section 232 duties "are not akin" to section 201 safeguard duties.[99]
- In *Wheatland*, the CAFC also agreed with Commerce that deducting section 201 duties from EP would run the risk of imposing a double remedy, which is something that Congress did not intend to do.[100]
- In this case, Commerce concluded that no similar concern is present here because "the function of antidumping duties and {s}ection 232 duties is separate and distinct, such that there would be no overlap between the two in providing the remedies sought by each."[101] However, Commerce's conclusory statement fails to come to grips with the double remedy issue identified by the CAFC in *Wheatland.*[102]
- In the instant case, Commerce's methodology creates a dumping margin where one did not previously exist due to the deduction of the section 232 duties from EP or CEP.
- In the *Preliminary Results*, Commerce attempts to sidestep the double remedy issue by citing to a statement in the Annex to *Proclamation 9740* 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."[103] Commerce argues that this statement confirms that the section 232 duties are to be treated as regular customs duties.[104]
- However, the issue is not whether antidumping duties continue to apply to imports of standard pipe. Rather, as explained by the CAFC, the issue is whether Commerce should be permitted to collect the section 232 duties a second time in the form of an increased antidumping duty above the amount of any preexisting dumping margin.[105]

---

[97] *See* Borusan's Case Brief at 12 (citing *Proclamation 9711 of March 22, 2018 Adjusting Imports of Steel Into the United States*, 83 FR 13361 (March 28, 2018); *Proclamation 9740 of April 30, 2018 Adjusting Imports of Steel Into the United States*, 83 FR 20683 (May 7, 2018); *Proclamation 9759 of May 31, 2018 Adjusting Imports of Steel Into the United States*, 83 FR 25857 (June 5, 2018); *Proclamation 9772 of August 10, 2018 Adjusting Imports of Steel Into the United States*, 83 FR 40429 (August 15, 2018); *Proclamation 9886 of May 16, 2019 Adjusting Imports of Steel Into the United States*, 84 FR 23421 (May 21, 2019); *Proclamation 9894 of May 19, 2019 Adjusting Imports of Steel Into the United States*, 84 FR 23987 (May 23, 2019); and *Proclamation 9980 of January 24, 2020 Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 FR 5281 (January 29, 2020)).

[98] *Id*.

[99] *Id*. at 13.

[100] *See Wheatland Tube*, 495 F.3d at 1363; *SSWR from Korea*, 69 FR at 19160.

[101] *See* Commerce's Section 232 Memo at 9.

[102] *See* Borusan's Case Brief at 13 (citing *Wheatland Tube*, 495 F.3d at 1363 (quoting *SSWR from Korea*, 69 FR at 19,160), which states "{w}here there is a pre-existing dumping margin, deducting the 201 duties from U.S. prices effectively would collect the 201 duties twice-first as 201 duties, and a second time as an increase in that dumping margin. Where there was no preexisting dumping margin, the deduction of 201 duties from U.S. prices in an AD proceeding could create a margin. Nothing in the legislative history of section 201 or the AD law indicates that Congress intended such results.")).

[103] *Id.* at 14 (citing Commerce's Section 232 Memo at 9).

[104] *Id*.

[105] *Id*.

- Accordingly, Commerce's conclusion that subtracting the section 232 duties from EP or CEP does not impose a double remedy is in direct conflict with the reasoning of *SSWR from Korea* as affirmed by the CAFC in *Wheatland*.[106]
- Commerce's treatment of the section 232 duties as ordinary customs duties ignores constitutional principles and the statutory scheme established by Congress which vests in Congress the sole authority to impose tariffs but allows the President to impose special duties such as under the Trade Expansion Act of 1962.[107]

Petitioner's Argument:

- 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 the section 232 duties from the U.S. price.[108]
- The term "United States import duties" is not defined in the statutory description of U.S. price.[109] The President's Section 232 Proclamation, however, makes clear that the section 232 duties are import duties.[110]
- Thus, the Proclamation plainly requires that the section 232 duties be treated as ordinary import duties and repeatedly refers to such duties as tariffs, duties, and duty rates. These duties are embodied in the HTSUS and are explicitly referred to as the "ordinary customs duty" treatment applicable to imports of covered steel products.[111]
- The essence of the Presidential action under section 232 is to increase the rates of ordinary customs duties to adjust imports in order to protect national security.
- Section 232 duties are also explicitly distinguished from special rates of duty and antidumping and countervailing duties.
- U.S. import duties must be deducted from U.S. price under section 772(c)(2)(A) of the Act to ensure that there is a fair comparison between a U.S. price and an NV.[112] In such proceedings, NV does not include U.S. import duties. Thus, such duties also must not be included in the U.S. price to achieve an apples-to-apples comparison and permit the calculation of accurate dumping margins.[113]
- The practice of not treating antidumping, countervailing, and safeguard duties as U.S. import duties, and not deducting them from U.S. price, is an exception to the regular rule. Commerce extended this exception to section 201 duties based on its determination that they are "special" remedial duties that overlap with and are complementary to antidumping duties.[114] The CAFC upheld Commerce's

[106] *Id*.
[107] *Id*. at 15.
[108] *See* Petitioner's Rebuttal Brief at 1.
[109] *Id*. (citing Section 772 of the Act).
[110] *Id*.; *see also Presidential Proclamation No. 9705*, 83 FR 11625, 11626 (March 15, 2018) (*Proclamation 9705*).
[111] *Id*. at 3.
[112] *See* Petitioner Rebuttal Brief at 3; *Apex Exps. v. United States*, 777 F.3d 1373, 1374 (Fed. Cir. 2015).
[113] *Id*.
[114] *See* Petitioner's Rebuttal Brief (citing *SSWR from Korea* (Appendix I – Proposed Treatment of Section 201 Duties as a Cost)).

determination as a reasonable interpretation of an ambiguous statute.[115]

- Borusan argues that section 232 duties are also remedial in nature, like the safeguard duties, and, thus, controlled by prior determinations.[116] However, Borusan's argument that duties imposed to address national security concerns are equivalent to special antidumping or safeguard duties does not withstand scrutiny.[117]
- In addition, none of the reasons Commerce cited in its final results of *SSWR from Korea* for not deducting section 201 duties from U.S. price are present in the context of section 232 duties.[118]
- First, unlike section 201 safeguard duties, section 232 duties are of an indefinite rather than limited duration.[119]
- Section 201 duties may not last longer than four years, or eight years in the aggregate if relief is extended.[120] Further, the statute imposes additional limits on the rates of safeguard duties that may be applied and requires such duties to phase down at regular intervals if they last longer than a year.[121]
- The statute also prohibits taking new safeguard action on an article that was the subject of action for specified periods of time.[122]
- By contrast, section 232 delegates to the President the discretion to decide both the nature and duration of any action taken to adjust imports for national security reasons, and it imposes no limits on the rates of section 232 duties that may be applied or the period of time over which they may stay in effect.[123]
- To date, the President has not indicated any limitation on the duration of the section 232 duties currently in effect. This makes section 232 duties like regular customs or import duties and it distinguishes them from section 201 duties and other "special duties" that are of specific duration.[124]
- 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.[125]
- Second, section 201 duties provide relief for a domestic industry suffering serious injury due to a surge in imports.[126] Also, under section 201, the ITC recommends action that would address serious injury to the domestic industry and be effective in facilitating efforts of the domestic industry to make a positive adjustment to import competition.[127]
- Moreover, the safeguard statute similarly directs the President to take action to

[115] *Id. (citing Wheatland*).
[116] *Id*. at 4.
[117] *Id*.
[118] *Id*. at 5.
[119] *Id*. at 6.
[120] *See* 19 U.S.C. § 2253(e)(1).
[121] *See* 19 U.S.C. § 2253(e)(3), (5).
[122] *Id.*; *see also* 19 U.S.C. § 2253(e)(7).
[123] *See* 19 U.S.C. § 1862(c)(1)(A)(ii).
[124] *Id*.
[125] *Id*. at 7.
[126] *Id.*; *see also* 19 U.S.C. § 2252(b)(1); *see also* S. Rep. No. 93-1298 at 119 (1974).
[127] *Id.*; *see also* 19 U.S.C. § 2252(e)(1).

facilitate efforts by the domestic industry to make a positive adjustment to import competition.[128]

- Section 232 duties, in contrast, are not imposed as a remedial measure to permit an injured domestic industry to adjust to import competition. Section 232 duties are not remedial at all. Under section 232, the Secretary is not directed to determine whether imports are injuring a domestic industry, but rather whether imports are "entering in such quantities or under such circumstances as to threaten to impair the national security."[129]
- There is no requirement that the Secretary or the President determine that a domestic industry is injured by imports in order to impose section 232 duties. The President must determine whether to concur with the Secretary's findings regarding the threat to national security, not whether such imports have surged into the United States and injured a domestic industry.[130]
- Section 232 duties are not designed to provide limited, temporary relief to an injured domestic industry. They are neither remedial nor "special" in the same sense as section 201 safeguard duties. Instead, section 232 duties are an increase in the regular customs duties that may last as long as necessary to adjust imports such that the national security of the United States is no longer threatened.[131]
- Borusan focuses on how duties imposed by the President pursuant to section 232 are unlike ordinary customs duties established by Congress. However, Borusan's argument ignores that the President's declaration plainly states that the heading which sets out the section 232 duties, "sets forth the ordinary customs duty treatment applicable to all entries of iron or steel …"[132]
- Further, while section 201 duties were also implemented through a modification of Chapter 99 of the HTSUS, the President's Proclamation imposing such section 201 duties did not state that such duties were ordinary customs duties.[133]
- Accordingly, Borusan's argument that the section 232 duties were established in a manner different than other customs duties misses the point.[134]
- Nothing in section 232 requires the Secretary or the President to determine whether the threat to national security reflects dumping or may be more appropriately remedied by antidumping duties.[135] Further, 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.[136]
- On the contrary, the Proclamation imposing section 232 duties expressly states: "All antidumping, countervailing, or other duties and charges applicable to such goods shall

[128] *Id.*; *see also* 19 U.S.C. § 2253(a)(1)(A).
[129] *Id.*; *see also* 19 U.S.C. § 1862(b)(3)(A).
[130] *Id.*; *see also* 19 U.S.C. § 1862(c)(1)(A)(i).
[131] *Id*.
[132] *See Proclamation 9705* at 11629.
[133] *Id.* at 10555 (para. 9).
[134] *See* Petitioner's Case Brief at 9.
[135] *Id*. at 9-10*; see also SSWR from Korea* at 19160 & n.27 (citing S. Rep. No. 93-1298 at 123 (1974)), *SSWR from Korea* at 19160 & n.28 (citing Uruguay Round Agreements Act Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 at 964 (1994)); *SSWR from Korea* at 19160 & n.29 (citing 19 U.S.C. § 1673 and S. Rep. No. 93–1298 at 121 (1974)), and 19 U.S.C. § 2252(c)(5)).
[136] *See* Petitioner's Case Brief at 9*; see also* 19 U.S.C. § 1862.

continue to be imposed" and shall be applied "in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles."[137]

- Because the President has explicitly determined that section 232 duties are entirely independent from, and assessed in addition to, antidumping duties, Commerce's concern in *SSWR from Korea* that deducting section 201 duties from U.S. price would "upset the balance" struck by the President in setting the level of section 201 duties,[138] is not implicated here.
- Section 232 duties and antidumping duties are also designed to address different policy concerns, in that antidumping and safeguard duties remedy injury to the domestic industry caused by increased imports, whereas, section 232 duties adjust imports to preserve national security.
- In *SSWR from Korea*, Commerce noted that both safeguard duties and antidumping duties remedy injury to a domestic industry caused by imports.[139]
- Under section 232, however, the focus is not on injury to a domestic industry, but rather on the threat to national security if a critical industry were unable to support the nation's defense and critical infrastructure needs.[140]
- While section 201 and the antidumping law focus on the volume of imports, section 232 directs the Secretary and President to also take into account imports' "availabilities, character, and use" as they affect the capacity of the United States to meet national security requirements.[141] Thus, the Secretary may determine that an article is being imported "in such quantities or under such circumstances as to threaten to impair the national security."[142]
- It is also not relevant under section 232 whether imports may be dumped, and the President is not directed to take existing antidumping duties into account when determining the action to be taken under section 232. Further, relief may be imposed under section 232 to protect national security even if a domestic industry has not been injured by imports.[143]
- Borusan 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.[144]
- 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.[145]

---

[137] *Id.*; *see also Proclamation 9705*, 83 FR at 11627, 11629.
[138] *Id*. at 11; *see also SSWR Korea*, 69 FR at 19160.
[139] *Id.* at 19, 160 n.29.
[140] *Id.*; *see also* 19 U.S.C. § 1862(d) and 19 U.S.C. § 1862(b)(3)(A).
[141] *See* 19 U.S.C. § 1862(d).
[142] *See* 19 U.S.C. § 1862(b)(3)(A)
[143] *See* Petitioner's Rebuttal Brief at 12.
[144] *Id*. at 13-14.
[145] *Id*.

Commerce's Position: We disagree with Borusan's argument that the section 232 duties are special duties similar to section 201 safeguard or antidumping duties, and continue to find the section 232 duties to be analogous to U.S. import duties that are properly deducted from EP and CEP pursuant to the statute.[146] As stated in the *Preliminary Results* and in Commerce's Section 232 Memo, the Annex to *Proclamation 9740*, which is the Presidential Proclamation that established the nature and treatment of 232 duties, refers to the 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..."[147] In other words, contrary to Borusan's argument, the section 232 duties are treated as any other import duties.

In support of its arguments that the section 232 duties are special duties, analogous to section 201 safeguard or antidumping duties, Borusan relies on *Wheatland*, where the CAFC sustained Commerce's determination in *SSWR from Korea* not to adjust U.S. prices in antidumping proceedings for section 201 duties under the statutory provision.[148] As noted in the *Preliminary Results*, the CAFC has previously considered whether certain types of duties constitute "United States import duties" for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce's determination not to adjust the U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.[149] Having acknowledged Commerce's analysis of the legislative history to the Antidumping Act of 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.'"[150]

The CAFC then found reasonable Commerce's analysis that section 201 duties were more akin to antidumping duties than "ordinary customs duties."[151] 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."[152] In sustaining

[146] *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.…")
[147] *See Proclamation 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.
[148] *Id.* at 1363.
[149] *See Wheatland*, 495 F.3d 1355, 1363.
[150] *Id.* at 1361.
[151] *Id.* at 1362.
[152] *Id.* at 1362-63.

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."[153]

Section 232 duties covering the steel products at issue in this case, however, were implemented to address national security concerns.[154] 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..."[155] In contrast, section 201 and antidumping and countervailing duties provide relief to U.S. companies from imports that threaten or injure their businesses.[156] Thus, unlike section 232 duties, section 201 and antidumping and countervailing duties "are all directed at the same overarching purposes – protecting the bottom line of domestic producers."[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 to bolster the domestic steel industry. 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.[158] 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."[159] 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.[160]

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.[161] Accordingly, Borusan contends that deducting section 232 duties from the U.S. price risks imposing a double remedy.[162] However, reducing U.S. EP and CEP by section 232

---

[153] *Id.* at 1365.
[154] *See*, *e.g.*, Commerce's Section 232 Memo at 7.
[155] *See Proclamation 9705*, 83 FR at 11627; *Proclamation 9711*, 83 FR 13361, 13363 ("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*, 83 FR 20683 (similar); *Proclamation 9759*, 83 FR 25857 (similar); *Proclamation 9772*, 83 FR 40429 (similar); *Proclamation 9777*, 83 FR 45025 (similar).
[156] *See Wheatland*, 495 F. 3d 1355, 1363.
[157] *Id*.
[158] *See* section 232 of the Trade Expansion Act of 1962.
[159] *Id*.
[160] *See* section 232 Duties Memo at 8-9.
[161] *See* Borusan's Case Brief at 8-10.
[162] *Id*. at 13-14.

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."[163] 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.[164] 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.[165] 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. Accordingly, we disagree with Borusan's argument that reducing U.S. EP and CEP by section 232 duties risks imposing a double remedy, because Borusan's argument is solely based on its supposition that the purpose of section 232 duties is akin to that of section 201 and antidumping duties, which, as explained above, is not the case.

Borusan argues that since the publication of *Proclamation 9705*, the President has already modified the section 232 duties on steel articles on multiple occasions. This, according to Borusan, demonstrates that the section 232 duties, like section 201 safeguard duties, are temporary in nature.[166] However, Borusan points to no evidence demonstrating that the section 232 duties are temporary in nature. We agree with the petitioner that there is no indication that the circumstances leading the President to impose the duties to protect national security will abate in the foreseeable future, and the relevant Presidential declarations provide no indication when the duties might be lifted. Unlike the limited duration of section 201 safeguard duties, section 232 delegates to the President the discretion to decide both the nature and duration of any action taken to adjust imports for national security reasons and it imposes no limits on the rates of section 232 duties that may be applied or the period of time over which they may stay in effect.[167]

Borusan further 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,

---

[163] *See* section 772(c)(2)(A) of the Act.
[164] *See* section 232 Duties Memo at 9.
[165] *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.
[166] *See* Borusan's Case Brief at 11-13.
[167] *See* Petitioner's Rebuttal Brief at 6*; see also* 19 U.S.C. § 1862(c)(1)(A)(ii).

section 201 duties.[168] 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.[169] In *SSWR from Korea,* Commerce also explained 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."[170]

Therefore, for the final results, we have continued to determine based on the reasons noted above, consistent with the *Preliminary Results*, 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.[171]

V. 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

3/15/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

[168] *See* Borusan's Case Brief at 16-17.
[169] *See SSWR from Korea*, 69 FR at 19160.
[170] *Id.*
[171] We note that in Commerce Transpacific Steel LLC v. United States, the CIT found certain 232 tariffs to be unconstitutional. However, in light of the fact that Commerce has appealed this court decision and this matter is currently in litigation, as well as for other reasons, Commerce has continued to deduct all of Borusan's reported section 232 duties from the EP and CEP in these final results, consistent with its Preliminary Results. See Commerce's Letter, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Borusan Section 232 Notification Letter," dated March 15, 2021.